

HELPFUL INFORMATION FOR LONG-TERM CARE OPTIONS COUNSELING: AN OVERVIEW OF LIEN LAW

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Methods of Recovery

- Liens on homes
- Recovering assets from estates
- Voluntary recoveries

MEDICAL ASSISTANCE PAYMENTS SUBJECT TO LIEN

- MA benefits received after October 1, 1991 by a person of any age while living in a nursing home.
- MA benefits received after April 1, 2000 by a person age 55 and older for: home health skilled nursing services; home health aide services; home health therapy and speech pathology; private duty nursing services; services provided under COP waiver and CIP.

- MA benefits received after April 1, 2000 by a person 55 and older for service under COP "Classic."
- MA benefits received after April 1, 2000 by a person of any age for the Disease Aids Programs.

- MA benefits received after April 1, 2000 by a person 55 and older for personal care services.
- MA benefits received after April 1, 2000 by a person who is hospitalized and likely to remain there on a permanent basis.

PROPERTY SUBJECT TO LIEN

- The state may only place a lien on the MA recipient's home.
- "Home" is the property in which a person has an ownership interest and which used to be the person's dwelling.

LIMITS ON THE STATE'S AUTHORITY TO PLACE A LIEN

- There is a "reasonable" expectation that the recipient will return home
- The spouse lives in the home.
- A child under 21 lives in the home.

- A disabled child of any age lives in the home.
- A sibling who has an ownership interest in the home and has lived in the home for one year before the MA recipient entered the nursing home.

LIMITS ON THE STATE'S AUTHORITY TO COLLECT ON THE LIEN

- A living spouse, no matter where the spouse lives
- A child under 21 or a disabled child, no matter where the child lives

- If the MA recipient is survived by a non-disabled adult child who lived with the parent for two years and provided care that delayed the parent's nursing home admission lives in the home.

Example: Georgia Adair entered a nursing home in July of 1999. Her son, Tom, who is disabled lives in her home. May the state place a lien?

- No.
- Paid services are recoverable.
- On the home
- Disabled child living in the home*

Example: Lloyd Buchelski has been in a nursing home for two years. Last year, his wife, Marie, moved to a small apartment. Can the state place a lien on the home?

- Yes.
- Paid services are recoverable
- On the home
- No "protected person" living in the home

Can the state enforce its lien on the home if Marie sells it?

- No.
- A living spouse, no matter where living

HELPFUL INFORMATION FOR LONG-TERM CARE OPTIONS COUNSELING: AN OVERVIEW OF ESTATE RECOVERY

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MEDICAL ASSISTANCE PAYMENTS SUBJECT TO RECOVERY

- MA benefits received after October 1, 1991 by a person of any age while living in a nursing home.
- MA benefits received after July 1, 1995 by a person age 55 and older for: home health skilled nursing services; home health aide services; home health therapy and speech pathology; private duty nursing services; services provided under COP waiver and CIP.

- MA benefits received after January 1, 1996 by a person 55 and older for service under COP "Classic."
- MA benefits received after January 1, 1996 by a person of any age for the Disease Aids Programs.
- MA benefits received after April 1, 2000 by a person 55 and older for personal care services.

CLAIMS AGAINST AN ESTATE

- The Department of Health and Family Services files a claim against the estate in the amount of Medical Assistance benefits paid on behalf of the deceased recipient.
- The state will be unsuccessful in collecting its claim if there is a surviving spouse, a surviving disabled child of any age, or a surviving child under the age of 21.

- Generally the state may only file a claim against the estate of the deceased recipient. If the deceased received benefits under the Community Options Program or the Disease Aids Programs the state may file a claim against the estate of the surviving spouse.

ASSETS SUBJECT TO RECOVERY

- The state may recover only assets that pass through the probate process by will or the laws of intestacy. *For example, real estate, cars, boats, bank accounts, etc.*
- Property that does not pass through probate is not subject to recovery. *For example life insurance or real estate held in joint tenancy.*

- Effective July 29, 1995 the state may recover from joint bank accounts or "payable on death" accounts.
- The probate court may reduce the state's claim by up to \$5,000 to allow the heirs to receive the deceased's wearing apparel, jewelry, household furnishings, and appliances.
- Generally the state will only request recovery for cash assets in small estates.

ESTATE RECOVERY AND LIENS

- If the estate includes a home and a spouse, or a disabled or minor child survives the deceased MA recipient the state may convert its claim to a lien.
- The same protections against enforcement apply to these liens as discussed in the lien section of this outline.

- Exception for Adult child who lived in home 24 months prior to admission and provided care that delayed recipients entry into nursing home.
- Exception for sibling who lived in home 12 months prior to admission.

WAIVER OF CLAIM FOR UNDUE HARDSHIP

- The waiver applicant is receiving General Relief, Relief to Needy Indian Persons or Veterans Benefits based on need; or
- The waiver applicant would become or remain eligible for SSI, FoodShare, AFDC, or Medical Assistance if the Department pursued its claim; or

- A decedent's real property is used as part of a waiver applicants business, and recovery by the Department would affect the property and would result in the waiver applicant losing his or her means of livelihood.